

**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Mortgage Broker Practices Act of Washington by:

LIBERTY FINANCIAL CORP., and  
MITCHELL L. SWEETEN, Designated Broker,  
  
Respondents.

NO. C-03-050-03-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENT TO REVOKE LICENSE,  
COLLECT ANNUAL ASSESSMENTS,  
COLLECT EXAMINATION FEES,  
IMPOSE MONETARY FINE, AND  
PROHIBIT FROM PARTICIPATION IN  
THE INDUSTRY

**INTRODUCTION**

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington ("Director") is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation, and based upon the facts available as of July 24, 2003 the Director institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1. Respondents:**

A. Liberty Financial Corp. ("Respondent Liberty") is licensed to conduct the business of a mortgage broker at:

15 South Grady Way  
Renton WA 98055

1 B. Mitchell L. Sweeten ("Respondent Sweeten") was named Designated Broker on January 3, 2000,  
2 and has continued as Designated Broker to date.

3 **2. License:** Respondent Liberty was licensed by the Department of Financial Institutions ("Department")  
4 to conduct business as a mortgage broker on January 3, 2000, and has continued to be licensed to date.

5 **3. State Corporate License:** Respondent Liberty was incorporated to do business in the State of  
6 Washington on October 13, 1999. The license of the corporation, issued by the Washington State Secretary of  
7 State, expired on October 31, 2002. To date, Respondents have not notified the Department of this change in  
8 standing with the State of Washington Secretary of State.

9 **4. Continuing Education Requirement:** A certificate of satisfactory completion of an approved  
10 continuing education course was due to the Department no later than the last business day of January 31, 2003. To  
11 date, the Respondents have not provided the Department with a certificate of completion of the required  
12 continuing education course.

13 **5. Annual Assessment:** An annual assessment fee is due to the Department each year, no later than the last  
14 business day of January. Respondents have not paid the annual assessment fee for 2002 in the amount of \$530.86  
15 which was due by January 31, 2003, or the annual assessment fee for 2003 in the amount of \$530.86 which is  
16 due no later than January 31, 2004.

17 **6. Surety Bond:** The Indemnity Company of California notified the Department on December 23, 2002, that  
18 Respondent Liberty's surety bond would be cancelled effective January 23, 2003. The Department attempted to  
19 send Respondents a Directive and Requirement notifying them of the cancellation of the bond. The Department  
20 mailed the Directive and Requirement to Respondents' last known address. The mailed notice was returned to the  
21 Department as undeliverable. The Department also attempted to fax a copy of the notice to the Respondents' fax  
22 machine. The faxed copy was undeliverable because the fax machine was shown as "busy." To date, the  
23 Respondents have failed to notify the Department of the cancellation of the surety bond or to provide the required  
24 bond.

1 **7. On-Going Investigation:** The Department's investigation into the alleged violations of the Act by  
2 Respondents continues to date.

## 3 **II. GROUNDS FOR ENTRY OF ORDER**

4 **1. Disclosure of Significant Developments:** Pursuant to WAC 208-660-150(1)(e), the licensee must notify  
5 the Director in writing within thirty days after receipt of notification of cancellation of the licensee's surety bond.  
6 Pursuant to WAC 208-660-150(2), the licensee must notify the Director in writing ten days prior to a change of  
7 the location of the licensee's principal place of business. Pursuant to WAC 208-660-150(3)(b) and (f), the  
8 licensee must notify the Director in writing within five days after a change in mailing address or telephone  
9 number or standing with the state of Washington Secretary of State.

10 **2. Continuing Education Requirement:** Pursuant to RCW 19.146.215 and WAC 208-660-042, the  
11 designated broker of every licensee shall complete an annual continuing education requirement and file a  
12 certificate of satisfactory completion no later than the last business day of the month in which the anniversary  
13 date of the issuance of the licensee's license occurs.

14 **3. Requirement to Pay Fees:** Pursuant to RCW 19.146.228(1), WAC 208-660-060(3) and WAC 208-  
15 660-061, each mortgage broker shall pay to the Director an annual assessment fee no later than the last business  
16 day of the month in which the anniversary date of the issuance of the mortgage broker's license occurs.

17 **4. Requirement to Maintain Surety Bond:** Pursuant to RCW 19.146.205(4)(a) and WAC 208-660-  
18 150(1)(e), every mortgage broker shall file and maintain a surety bond with the Department and notify the  
19 Department of the cancellation of such bond.

20 **5. Authority to Revoke License:** Pursuant to RCW 19.146.220(2)(b)(ii) and (iv), and WAC 208-660-  
21 160(1) and (8), the Director may revoke a license if a licensee fails to pay a fee required by the Director, or fails  
22 to maintain the required bond.

23 **6. Authority to Charge Examination Fee:** Pursuant to RCW 19.146.228(2), WAC 208-660-060(2) and WAC  
24 208-660-061, upon completion of any examination of the books and records of a licensee, the Department will furnish

to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of forty-seven dollars and seventy-eight cents (\$47.78) per hour that each staff person devoted to the examination.

**7. Authority to Impose Fine:** Pursuant to RCW 19.146.220(2)(c)(i) and WAC 208-660-165, the Director may impose fines on the licensee for any violation of RCW 19.146.205(4).

**8. Authority to Prohibit from the Industry:** Pursuant to RCW 19.146.220(2)(e)(i), the Director may prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act for any violation of RCW 19.146.205(4).

**9. Accounting Requirements:** Pursuant to RCW 19.146.060 and WAC 208-660-140, every mortgage broker shall maintain accurate and current books and records which shall be readily available to the Department until at least twenty-five months have elapsed following the effective period to which the books and records relate.

### III. NOTICE OF INTENT TO ENTER ORDER

Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 19.146.220. Therefore, it is the Director's intention to ORDER that:

1. Respondent Liberty's license to conduct the business of a mortgage broker be revoked; and
2. Respondents jointly and severally pay the \$530.86 Annual Assessment for 2002 immediately. Additionally, Respondents jointly and severally pay the \$530.86 Annual Assessment for 2003 no later than January 31, 2004.
3. Respondents jointly and severally pay an examination fee in the amount of \$716.70 calculated at \$47.78 per hour for each staff hour devoted to the investigation (15 hours); and
4. Respondents jointly and severally pay a fine of \$2250.00 for failure to maintain a surety bond with the Department, calculated at \$75 per statutory violation per day, for 30 days; and
5. Respondent Sweeten be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of five (5) years.

6. Respondents maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent Liberty's mortgage broker business, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

#### IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intent to Revoke License, Collect Annual Assessments, Collect Examination Fees, Impose Monetary Fine, and Prohibit from Participation in the Industry is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221. and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intent to Revoke License, Collect Annual Assessments, Collect Examination Fees, Impose Monetary Fine, and Prohibit from Participation in the Industry.

Dated this 24th day of July, 2003.

/S/

CHUCK CROSS  
Acting Director and Enforcement Chief  
Division of Consumer Services  
Department of Financial Institutions

**RCW 19.146.060 Accounting requirements.** (1) A mortgage broker shall use generally accepted accounting principles. (2) Except as otherwise provided in subsection (3) of this section, a mortgage broker shall maintain accurate and current books and records which shall be readily available at the mortgage broker's usual business location until at least twenty-five months have elapsed following the effective period to which the books and records relate. (3) Where a mortgage broker's usual business location is outside of the state of Washington, the mortgage broker shall, as determined by the director by rule, either maintain its books and records at a location in this state, or reimburse the director for his or her expenses, including but not limited to transportation, food, and lodging expenses, relating to any examination or investigation resulting under this chapter. (4) "Books and records" includes but is not limited to: (a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer data base or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and (b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan. [1997 c 106 § 6; 1994 c 33 § 20; 1987 c 391 § 8.]

**RCW 19.146.205 License – Application – Exchange of fingerprint data with federal bureau of investigation – Fee – Bond or alternative.**

... (4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

... [1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 § 6.]

**RCW 19.146.215 Continuing education – Rules.** The designated broker of every licensee shall complete an annual continuing education requirement, which the director shall define by rule. [1997 c 106 § 11; 1994 c 33 § 11.]

**RCW 19.146.220 Director – Powers and duties – Violations as separate violations – Rules.** (1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

...

(b) Suspend or revoke licenses for: . . .

(ii) Failure to pay a fee required by the director or maintain the required bond;

...

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201(1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

...

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265;

...

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

**RCW 19.146.221 Action by director – Hearing – Sanction.** The director may, at his or her discretion and as provided for in \*RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter. [1994 c 33 § 13.]

**RCW 19.146.223 Director – Administration and interpretation.** The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005. [1994 c 33 § 2.]

**RCW 19.146.228 Fees – Rules – Exception.** The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule; . . .

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter;

...

[1997 c 106 § 13; 1994 c 33 § 9.]

**RCW 19.146.230 Administrative procedure act application.** The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant

1 to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative  
2 procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]  
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**WAC 208-660-042 Continuing education requirement.** (1) The principal or designated broker of a licensee must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated broker no later than the last business day of the month in which the anniversary date of the issuance of the licensee's license occurs.

(2) This section applies to each licensee beginning on the first anniversary date of the issuance of the licensee's license which occurs after December 31, 1995. (For example, if a licensee's license was issued on January 10, 1994, then the licensee must submit its first certificate of satisfactory completion of an approved continuing education course no later than the last business day of January 1996.)

**WAC 208-660-060 Department's fees and assessments.**

...

(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

**WAC 208-660-061 Fee increase.** The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

**WAC 208-660-140 General recordkeeping requirements.** (1) Each mortgage broker shall retain its books and records for a minimum of twenty-five months after the effective period to which the books and records relate.

However, books and records relating to a specific loan application must be maintained for a minimum of twenty-five months after a loan application is received. These books and records must be retained in all cases where a loan application has been received, any deposits or fees associated with a mortgage application have been accepted, or any written agreement has been executed.

(2) All books and records must be kept in a location in this state that is readily accessible to the department. However, a mortgage broker may store its books and records outside the state with the prior approval of the director, and after executing a written agreement with the director:

(a) To provide access to its books and records to investigate complaints against the mortgage broker; and

(b) To pay the department's travel, lodging and per diem expenses incurred in travel to examine books and records stored out-of-state.

(3) Books and records include without limitation: The original contracts for the broker's compensation, an accounting of all funds received in connection with loans, a copy of the settlement statements as provided to borrowers, a record of any fees refunded to applicants for loans that did not close, copies of the good faith estimates and all other written disclosures, and all other correspondence, papers or records relating to loan applications.

**WAC 208-660-150 Disclosure of significant developments.** (1) A licensee must notify the director in writing within thirty days after the occurrence of any of the following developments:

...  
(e) Receipt of notification of cancellation of the licensee's surety bond or approved alternative, or any significant decline in value of an approved alternative held by the director.

...  
(2) A licensee must notify the director in writing ten days prior to a change of the location of the licensee's principal place of business or any of its branch offices.

(3) A licensee must notify the director in writing within five days after a change in the licensee's:

...  
(b) Mailing address or telephone number;

...  
(f) Standing with the state of Washington secretary of state.

**WAC 208-660-160 License application denial or condition; license suspension or revocation.** The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

(1) Has failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act;

...  
(8) Has had its surety bond, approved alternative, or equivalent form of business insurance, canceled or revoked for cause;

**WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act.** Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.